



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

COFFIN et al.

Serial No. 09/762,098

Filed: February 2, 2001

For: CELL LINES FOR THE PROPAGATION OF MUTATED HERPES VIRUSES

RECEIVED

Atty. Ref.: 117-340

AUG 21 2002

Group: 1648

TECH CENTER 1600/2900

Examiner: Li

August 16, 2002

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

CONTINGENT RULE 181 PETITION

Applicant hereby petitions the Commissioner to invoke his supervisory authority and have the requirement for restriction as between the subject matter of the Examiner's Groups I-VI as defined in the Office Action of May 16, 2002, withdrawn, in the event the Examiner refuses to do the same as requested in the attached Response. Alternatively, the Commissioner is requested to invoke his supervisory authority and have the Examiner properly state and provide a basis for any further restriction requirement in a further non-final Office Action wherein the applicants may change their election of the attached Response, at their discretion.

The following is a statement of the facts, as required by Rule 181(b), and point or points to be reviewed and the action requested.

The Examiner has made an inappropriate and unsupported restriction requirement in the Office Action dated May 16, 2002 (Paper No. 8) as the claims share a unity of invention, as defined in the MPEP and PCT Rules.

The Commissioner is requested to review the restriction requirement in the event the Examiner refuses to withdrawal the same in response to the request for reconsideration contained in the attached Response. The Commissioner is then requested to invoke his supervisory authority and have the requirement withdrawn or, at a minimum, restated in a new non-final Action wherein the applicants at their discretion, may change the election of the attached Response.

A proper request for reconsideration has been made in the attached Response, as required by Rule 181(c). The present Petition is only to be considered in the event the Examiner refuses that request for reconsideration.

No fee is believed required for consideration of the present Petition as the Petition is only required due to Patent Office error in not granting the attached request for reconsideration. The Office is authorized to charge the undersigned's Deposit Account

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No. 14-1140 (Order No. 117-340) in the event the Commissioner deems otherwise. Two copies of the undersigned's cover sheet are attached for this purpose.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____



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